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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CALIFORNIA DEPARTMENT OF
TOXIC SUBSTANCES CONTROL
and the CALIFORNIA TOXIC
SUBSTANCES CONTROL
ACCOUNT,

Plaintiffs,

v.

AMERICAN HONDA MOTOR CO.,
INC.; ANADARKO E&P
COMPANY LP; ATLANTIC
RICHFIELD COMPANY; BAYER
CROPSCIENCE INC.; THE
BOEING COMPANY; CHEMICAL
WASTE MANAGEMENT, INC.;
CHEVRON ENVIRONMENTAL
MANAGEMENT COMPANY; CITY
OF LOS ANGELES, acting by and
through the LOS ANGELES
DEPARTMENT OF WATER AND
POWER; CONOCOPHILLIPS
COMPANY; THE DOW

Case No.: **CV 10-03378**

SECOND COMPLAINT FOR
RECOVERY OF RESPONSE
COSTS, INJUNCTIVE AND
DECLARATORY RELIEF UNDER
FEDERAL AND STATE LAW

FILED
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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY: _____

RGK AJWx

**CHEMICAL COMPANY;
DUCOMMUN
AEROSTRUCTURES, INC.;
EXXONMOBIL CORPORATION;
GEMINI INDUSTRIES, INC.;
GENERAL LATEX AND
CHEMICAL CORPORATION;
HONEYWELL INTERNATIONAL,
INC.; HUNTINGTON BEACH
COMPANY; LOCKHEED MARTIN
CORPORATION; MCFARLAND
ENERGY, INC.; MORTON
INTERNATIONAL, INC.;
NATIONAL STEEL AND
SHIPBUILDING COMPANY;
NORTHROP GRUMMAN
CORPORATION; QUEMETCO,
INC.; RAYTHEON COMPANY;
ROHR, INC.; ROHM AND HAAS
COMPANY; SHELL OIL
COMPANY; SOUTHERN
CALIFORNIA EDISON COMPANY;
THUMS LONG BEACH
COMPANY; UNION CARBIDE
CORPORATION; UNION OIL
COMPANY OF CALIFORNIA;
WASTE MANAGEMENT
COLLECTION AND RECYCLING,
INC.; WESTERN WASTE
INDUSTRIES; and XEROX
CORPORATION,**

Defendants.

**PLAINTIFFS, CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES
CONTROL AND THE CALIFORNIA TOXIC SUBSTANCES CONTROL
ACCOUNT, ALLEGE AS FOLLOWS:**

1. This is a civil action by the Plaintiff California Department of Toxic Substances Control (“DTSC”) and the California Toxic Substances Control Account (“Account”) for recovery of past response costs and for declaratory relief pursuant to sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9607 and 9613, as amended, and to seek injunctive relief pursuant to California Health and Safety Code section 25358.3(e).

2. Plaintiffs have incurred response costs in connection with actions taken pursuant to CERCLA and related state law in response to releases or threatened releases of hazardous substances at a Class I hazardous waste landfill owned by BKK Corporation (“BKK”), which is located at 2210 South Azusa Avenue, West Covina, County of Los Angeles, California. That Class I hazardous waste landfill, together with the leachate treatment plant (“LTP”), integrated gas collection systems, the service roads, and related pollution control equipment serving it will be referred to herein as “the Subject Property.”

JURISDICTION AND VENUE

3. This Court has jurisdiction over claims by Plaintiffs under federal law pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 9613(b). Venue is proper in this district under 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b) because a release or threatened release of hazardous substances into the environment, and the other events or omissions that give rise to the claims herein, occurred in this judicial district. This Court has jurisdiction over the subject matter of the claims made under state law in this action under 28 U.S.C. § 1367(a) (supplemental jurisdiction) because the claims under state law arise out of the same common nucleus of facts as the federal question jurisdiction claims set forth in this Complaint and they are so closely related to the actions brought under federal law that they form part of the same case or controversy.

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4. Plaintiffs bring claims for recovery of past costs and for declaratory relief pursuant to sections 107(a) and 113(g) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(g), for response, removal, and remedial costs resulting from a release or threat of release of hazardous substances at the Subject Property, and pursuant to California Health and Safety Code section 25358.3(e), for injunctive relief to abate the threat from an imminent or substantial endangerment presented by the release or threatened release of hazardous substances.

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5. Plaintiff DTSC is an agency of the State of California organized and existing pursuant to California Health and Safety Code section 58000, *et seq.* Under California law, DTSC is charged with the responsibility for responding to releases or threatened releases of hazardous substances that pose a threat to the public health or the environment. Plaintiff Account is an account within the State General Fund that is administered by the Director of DTSC. Pursuant to California Health and Safety Code section 25361, the Account may sue in its own name to recover response costs it incurs.

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6. Defendant American Honda Motor Co., Inc. is a corporation organized under the laws of the State of California. At all times referred to herein, American Honda Motor Co., Inc. was and is authorized to do business, and was and is doing business, in California and arranged for the disposal of a hazardous substance at the Subject Property, as those terms are described in section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

7. Defendant Anadarko E&P Company LP is a corporation organized under the laws of the State of Delaware. At all times referred to herein, Anadarko E & P Company, or its corporate predecessor, was and is authorized to do business, and was and is doing business, in California and arranged for the disposal of a

1 hazardous substance at the Subject Property, as those terms are described in section
2 107(a) of CERCLA, 42 U.S.C. § 9607(a).

3 8. Defendant Atlantic Richfield Company is a corporation organized under
4 the laws of the State of Delaware. At all times referred to herein, Atlantic Richfield
5 Company, or its corporate predecessor, was and is authorized to do business, and
6 was and is doing business, in California and arranged for the disposal of a
7 hazardous substance at the Subject Property, as those terms are described in section
8 107(a) of CERCLA, 42 U.S.C. § 9607(a).

9 9. Defendant Bayer Cropscience, Inc. is a corporation organized under the
10 laws of the State of Delaware. At all times referred to herein, Bayer Cropscience,
11 Inc., or its corporate predecessor, was and is authorized to do business, and was and
12 is doing business, in California and arranged for the disposal of a hazardous
13 substance at the Subject Property, as those terms are described in section 107(a) of
14 CERCLA, 42 U.S.C. § 9607(a).

15 10. Defendant The Boeing Company is a corporation organized under the
16 laws of the State of Delaware. At all times referred to herein, The Boeing
17 Company, or its corporate predecessor, was and is authorized to do business, and
18 was and is doing business, in California and arranged for the disposal of a
19 hazardous substance at the Subject Property, as those terms are described in section
20 107(a) of CERCLA, 42 U.S.C. § 9607(a).

21 11. Defendant Chemical Waste Management, Inc. is a corporation organized
22 under the laws of the State of Delaware. At all times referred to herein, Chemical
23 Waste Management, Inc., or its corporate predecessor, was and is authorized to do
24 business, and was and is doing business, in California and arranged for the disposal
25 of a hazardous substance at the Subject Property, as those terms are described in
26 section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

27 12. Defendant Chevron Environmental Management Company is a
28 corporation organized under the laws of the State of Pennsylvania. At all times

1 referred to herein, Chevron Environmental Management Company, or its corporate
2 predecessor, was and is authorized to do business, and was and is doing business, in
3 California and arranged for the disposal of a hazardous substance at the Subject
4 Property, as those terms are described in section 107(a) of CERCLA, 42 U.S.C. §
5 9607(a).

6 13. Defendant City of Los Angeles, acting by and through the Los Angeles
7 Department of Water and Power, is a municipal utility, and arranged for the
8 disposal of a hazardous substance at the Subject Property, as those terms are
9 described in section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

10 14. Defendant ConocoPhillips Company is a corporation organized under the
11 laws of the State of Delaware. At all times referred to herein, ConocoPhillips
12 Company, or its corporate predecessor, was and is authorized to do business, and
13 was and is doing business, in California and arranged for the disposal of a
14 hazardous substance at the Subject Property, as those terms are described in section
15 107(a) of CERCLA, 42 U.S.C. § 9607(a).

16 15. Defendant The Dow Chemical Company is a corporation organized
17 under the laws of the State of Delaware. At all times referred to herein, The Dow
18 Chemical Company , or its corporate predecessor, was and is authorized to do
19 business, and was and is doing business, in California and arranged for the disposal
20 of a hazardous substance at the Subject Property, as those terms are described in
21 section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

22 16. Defendant Ducommun Aerostructures, Inc. is a corporation organized
23 under the laws of the State of Delaware. At all times referred to herein, Ducommun
24 Aerostructures, Inc., or its corporate predecessor, was and is authorized to do
25 business, and was and is doing business, in California and arranged for the disposal
26 of a hazardous substance at the Subject Property, as those terms are described in
27 section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

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1 17. Defendant Exxon Mobil Corporation is a corporation organized under the
2 laws of the State of New Jersey. At all times referred to herein, Exxon Mobil
3 Corporation, or its corporate predecessor, was and is authorized to do business, and
4 was and is doing business, in California and arranged for the disposal of a
5 hazardous substance at the Subject Property, as those terms are described in section
6 107(a) of CERCLA, 42 U.S.C. § 9607(a).

7 18. Defendant Gemini Industries, Inc. is a corporation organized under the
8 laws of the State of California. At all times referred to herein, Gemini Industries,
9 Inc. or its corporate predecessor, was and is authorized to do business, and was and
10 is doing business, in California and arranged for the disposal of a hazardous
11 substance at the Subject Property, as those terms are described in section 107(a) of
12 CERCLA, 42 U.S.C. § 9607(a).

13 19. Defendant General Latex And Chemical Corporation is a corporation
14 organized under the laws of the State of Massachusetts. At all times referred to
15 herein, General Latex And Chemical Corporation , or its corporate predecessor, was
16 and is authorized to do business, and was and is doing business, in California and
17 arranged for the disposal of a hazardous substance at the Subject Property, as those
18 terms are described in section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

19 20. Defendant Honeywell International, Inc. is a corporation organized under
20 the laws of the State of Delaware. At all times referred to herein, Honeywell
21 International, Inc., or its corporate predecessor, was and is authorized to do
22 business, and was and is doing business, in California and arranged for the disposal
23 of a hazardous substance at the Subject Property, as those terms are described in
24 section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

25 21. Defendant Huntington Beach Company is a corporation organized under
26 the laws of the State of California. At all times referred to herein, Huntington
27 Beach Company., or its corporate predecessor, was and is authorized to do
28 business, and was and is doing business, in California and arranged for the disposal

1 of a hazardous substance at the Subject Property, as those terms are described in
2 section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

3 22. Defendant Lockheed Martin Corporation is a corporation organized
4 under the laws of the State of Maryland. At all times referred to herein, Lockheed
5 Martin Corporation , or its corporate predecessor, was and is authorized to do
6 business, and was and is doing business, in California and arranged for the disposal
7 of a hazardous substance at the Subject Property, as those terms are described in
8 section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

9 23. Defendant McFarland Energy, Inc. is a corporation organized under the
10 laws of the State of Delaware. At all times referred to herein, National Steel and
11 Shipbuilding Company, or its corporate predecessor, was and is authorized to do
12 business, and was and is doing business, in California and arranged for the disposal
13 of a hazardous substance at the Subject Property, as those terms are described in
14 section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

15 24. Defendant Morton International, Inc. is a corporation organized under the
16 laws of the State of Indiana. At all times referred to herein, Morton International,
17 Inc., or its corporate predecessor, was and is authorized to do business, and was and
18 is doing business, in California and arranged for the disposal of a hazardous
19 substance at the Subject Property, as those terms are described in section 107(a) of
20 CERCLA, 42 U.S.C. § 9607(a).

21 25. Defendant National Steel and Shipbuilding Company is a corporation
22 organized under the laws of the State of Nevada. At all times referred to herein,
23 National Steel and Shipbuilding Company, or its corporate predecessor, was and is
24 authorized to do business, and was and is doing business, in California and
25 arranged for the disposal of a hazardous substance at the Subject Property, as those
26 terms are described in section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

27 26. Defendant Northrop Grumman Corporation is a corporation organized
28 under the laws of the State of Delaware. At all times referred to herein, Northrop

1 Grumman Corporation, or its corporate predecessor, was and is authorized to do
2 business, and was and is doing business, in California and arranged for the disposal
3 of a hazardous substance at the Subject Property, as those terms are described in
4 section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

5 27. Defendant Quemetco, Inc. is a corporation organized under the laws of
6 the State of Delaware. At all times referred to herein, Quemetco, Inc., or its
7 corporate predecessor, was and is authorized to do business, and was and is doing
8 business, in California and arranged for the disposal of a hazardous substance at the
9 Subject Property, as those terms are described in section 107(a) of CERCLA, 42
10 U.S.C. § 9607(a).

11 28. Defendant Raytheon Company is a corporation organized under the laws
12 of the State of Delaware. At all times referred to herein, Raytheon Company, or its
13 corporate predecessor, was and is authorized to do business, and was and is doing
14 business, in California and arranged for the disposal of a hazardous substance at the
15 Subject Property, as those terms are described in section 107(a) of CERCLA, 42
16 U.S.C. § 9607(a).

17 29. Defendant Rohr, Inc. is a corporation organized under the laws of the
18 State of Delaware. At all times referred to herein, Rohr, Inc., or its corporate
19 predecessor, was and is authorized to do business, and was and is doing business, in
20 California and arranged for the disposal of a hazardous substance at the Subject
21 Property, as those terms are described in section 107(a) of CERCLA, 42 U.S.C. §
22 9607(a).

23 30. Defendant Rohm and Haas Company is a corporation organized under
24 the laws of the State of Delaware. At all times referred to herein, Rohm And Haas
25 Company, or its corporate predecessor, was and is authorized to do business, and
26 was and is doing business, in California and arranged for the disposal of a
27 hazardous substance at the Subject Property, as those terms are described in section
28 107(a) of CERCLA, 42 U.S.C. § 9607(a).

1 31. Defendant Shell Oil Company is a corporation organized under the laws
2 of the State of Delaware. At all times referred to herein, Shell Oil Company, or its
3 corporate predecessor, was and is authorized to do business, and was and is doing
4 business, in California and arranged for the disposal of a hazardous substance at the
5 Subject Property, as those terms are described in section 107(a) of CERCLA, 42
6 U.S.C. § 9607(a).

7 32. Defendant Southern California Edison Company is a corporation
8 organized under the laws of the State of California. At all times referred to herein,
9 Southern California Edison Company, or its corporate predecessor, was and is
10 authorized to do business, and was and is doing business, in California and
11 arranged for the disposal of a hazardous substance at the Subject Property, as those
12 terms are described in section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

13 33. Defendant Thums Long Beach Company is a corporation organized
14 under the laws of the State of Delaware. At all times referred to herein, Thums
15 Long Beach Company, or its corporate predecessor, was and is authorized to do
16 business, and was and is doing business, in California and arranged for the disposal
17 of a hazardous substance at the Subject Property, as those terms are described in
18 section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

19 34. Defendant Union Carbide Corporation is a corporation organized under
20 the laws of the State of New York. At all times referred to herein, Union Carbide
21 Corporation, or its corporate predecessor, was and is authorized to do business, and
22 was and is doing business, in California and arranged for the disposal of a
23 hazardous substance at the Subject Property, as those terms are described in section
24 107(a) of CERCLA, 42 U.S.C. § 9607(a).

25 35. Defendant Union Oil Company of California is a corporation organized
26 under the laws of the State of California. At all times referred to herein, Union Oil
27 Company of California, or its corporate predecessor, was and is authorized to do
28 business, and was and is doing business, in California and arranged for the disposal

1 of a hazardous substance at the Subject Property, as those terms are described in
2 section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

3 36. Defendant Waste Management Collection and Recycling, Inc. is a
4 corporation organized under the laws of the State of California. At all times
5 referred to herein, Waste Management Collection and Recycling, Inc., or its
6 corporate predecessor, was and is authorized to do business, and was and is doing
7 business, in California, and arranged for the disposal of a hazardous substance at
8 the Subject Property, as those terms are described in section 107(a) of CERCLA, 42
9 U.S.C. § 9607(a).

10 37. Defendant Western Waste Industries is a corporation organized under the
11 laws of the State of California. At all times referred to herein, Western Waste
12 Industries, or its corporate predecessor, was and is authorized to do business, and
13 was and is doing business, in California and arranged for the disposal of a
14 hazardous substance at the Subject Property, as those terms are described in section
15 107(a) of CERCLA, 42 U.S.C. § 9607(a).

16 38. Defendant Xerox Corporation is a corporation organized under the laws
17 of the State of New York. At all times referred to herein, Xerox Corporation, or its
18 corporate predecessor, was and is authorized to do business, and was and is doing
19 business, in California and arranged for the disposal of a hazardous substance at the
20 Subject Property, as those terms are described in section 107(a) of CERCLA, 42
21 U.S.C. § 9607(a).

22 39. The defendants identified in paragraphs 6 through 38 are collectively
23 referred to herein as “Defendants.”

24 **BACKGROUND**

25 40. BKK owns and operates a closed hazardous waste Class I landfill, a
26 closed municipal Class III landfill, and an operating leachate treatment plant
27 (“LTP”) located at 2210 South Azusa Avenue, West Covina, County of Los
28 Angeles, California (“the Facility”).

1 41. Home Savings of America, FSB (“Home Savings”) and/or one of its
2 affiliates owned the Facility from 1962 to 1976 and was an owner and operator of
3 the Class I landfill from the time of its inception until 1976. Home Savings or its
4 affiliate sold the Facility to BKK in 1976. The Class I landfill ceased accepting
5 hazardous waste in 1984, except for asbestos.

6 42. In the late 1980s, BKK closed the Class I Landfill under a Closure Plan
7 approved by the California Department of Health Services (the predecessor agency
8 to DTSC) and the United States Environmental Protection Agency.

9 43. During its operating life, the Class I landfill accepted waste containing
10 hazardous substances. From 1969 to 1984, the Class I landfill accepted
11 approximately 3.4 million tons of liquid and solid hazardous wastes, together with
12 large amounts of other wastes. During this period and afterwards, there were
13 sudden and accidental releases of hazardous substances.

14 44. Waste disposed at the Class I Landfill contained hazardous substances
15 including, but not limited to, mercury, copper, lead, chromium, chromium III,
16 chromium VI, K069 waste, zinc, cadmium, styrene, sodium bisulfate, hydrogen
17 sulfide, aluminum sulfate, sodium hydroxide, potassium cyanide, thallium, sodium
18 hydrosulfide, drilling muds, arsenic, nickel, ammonium hydroxide, polychlorinated
19 biphenyls (PCBs), API separator sludge (K051), hydrochloric acid, nitric acid,
20 pyridine, sodium hydroxide, phenol, methylene chloride, 1,1,1 trichloroethene, 1,4
21 dioxane solvent, naphthalene, chromic acid, paraformaldehyde, sulfuric acid, xylene,
22 and tetraethyl lead. Each of these substances is a “hazardous substance” as that
23 term is used in 42 U.S.C. § 9601(14).

24 45. The onsite LTP, which serves both landfills, has been operating since
25 1987. Landfill leachate, gas condensate, and contaminated groundwater are
26 commingled and treated at the LTP.

1 46. On June 30, 2004, DTSC issued a consolidated Hazardous Waste
2 Facilities Permit for Leachate Treatment Plant Operation and Class I Landfill Post-
3 Closure Care, which BKK appealed. z

4 47. BKK notified DTSC that it was not financially able to perform further
5 required post-closure care of the Class I landfill, including operation of the LTP,
6 after November 17, 2004. As a result, DTSC hired a contractor to conduct
7 emergency response activities at the Subject Property. These activities are
8 necessary to ensure continuous maintenance, monitoring, and operation of systems
9 that are essential to protect public health, safety and the environment.

10 48. On December 2, 2004, DTSC issued an imminent and substantial
11 endangerment order to fifty-one entities, including many of the defendants named
12 in this action. The order required the named entities to take actions at the Subject
13 Property to protect public health and safety and the environment.

14 49. Groundwater and landfill leachate at the Subject Property contains
15 hazardous substances. The gas collection system must be maintained and operated
16 24 hours per day to prevent releases of hazardous substances from the Facility.
17 Releases of methane and vinyl chloride from these systems are of particular
18 concern. Groundwater/leachate extraction wells must also be operated to prevent
19 migration of hazardous substances from the Facility.

20 50. The LTP must be maintained and kept operational to process liquids
21 coming from gas collection, leachate extraction, and groundwater extraction wells.
22 Failure to keep the LTP operational will force the shutdown of the wells. There is a
23 potential for release of hazardous substances to the environment from the landfills
24 if the Class I landfill cover deteriorates and allows hazardous substances to migrate.
25 Air emissions could lead to exposure of West Covina residents, and release of
26 hazardous substances resulting from cap erosion could potentially result in
27 exposures to workers onsite. A flammable and potentially explosive atmosphere
28 may also develop if methane released from the landfills mixes with ambient air. In

1 addition, historical failures to maintain storm water runoff systems has resulted in
2 serious onsite erosion problems that may result in hazardous substances being
3 released from the Class I landfill.

4 51. Failure to maintain and operate the groundwater and leachate extraction
5 wells will result in migration of hazardous substances from the Facility. This
6 includes the potential for creating contaminated surface water bodies in areas where
7 artesian conditions exist as well as impacting existing surface water bodies.

8 Residential areas are located immediately to the south and southeast of the Subject
9 Property. Several homes are located only 25 to 50 feet away from the Subject
10 Property. Commercial areas are located immediately to the west of the Subject
11 Property.

12 52. On March 6, 2006, DTSC filed a complaint against certain defendants.
13 including most of the defendants named in this action, for: (1) recovery of past
14 costs under CERCLA, pursuant to 42 U.S.C. § 9607(a); (2) declaratory relief under
15 CERCLA pursuant to section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2); and
16 (3) injunctive relief pursuant to California Health and Safety Code Section
17 25358.3(e). Concurrent with filing the complaint, the parties lodged a Consent
18 Decree to resolve the issues in the complaint. The Court entered the Amended First
19 Consent Decree on March 9, 2006. The Amended First Consent Decree was
20 extended to expire on April 12, 2010. The Parties have agreed to an additional
21 extension.

22 53. The defendants who are party to the Amended First Consent Decree have
23 responsibility to, among other things, maintain and operate the major environmental
24 protection systems at the Subject Property, to investigate certain landfill conditions,
25 and to repair, upgrade and/or update certain subsystems.

26 54. DTSC is a "State" for the purposes of cost recovery under section 107(a)
27 of CERCLA, 42 U.S.C. § 9607(a).
28

1 55. The Subject Property is a “facility” within the meaning of section 101(9)
2 of CERCLA, 42 U.S.C. § 9601(9).

3 **FIRST CLAIM FOR RELIEF**

4 (Recovery of Past Costs under CERCLA Against All Defendants, 42 U.S.C. §
5 9607(a).)

6 56. The allegations in paragraphs 1 through 55 are hereby incorporated as if
7 fully alleged herein.

8 57. There have been releases and/or threatened releases of the hazardous
9 substances listed in paragraph 44 above and other hazardous substances into the
10 environment at and near the Subject Property within the meaning of section 101(22)
11 of CERCLA, 42 U.S.C. § 9601(22).

12 58. As a result of the release or threatened release of hazardous substances at
13 the Subject Property, Plaintiffs have incurred costs for response at the Subject
14 Property within the meaning of section 101(25) of CERCLA, 42 U.S.C. § 9601(25).
15 All response costs have been incurred by Plaintiffs in a manner that satisfies the
16 requirements of section 107(a)(4), 42 U.S.C. § 9607(a)(4) in that the underlying
17 activities are not inconsistent with the applicable requirements of the National
18 Contingency Plan, 40 C.F.R. Part 300.

19 59. Defendants are jointly and severally liable to Plaintiffs without regard to
20 fault or negligence under section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all
21 past costs of response incurred by Plaintiffs in responding to the release or
22 threatened release of hazardous substances at the Subject Property.

23 **SECOND CLAIM FOR RELIEF**

24 (Declaratory Relief under CERCLA Against All Defendants)

25 60. The allegations in paragraphs 1 through 59 are hereby incorporated as if
26 fully alleged herein.

27 61. Pursuant to section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the
28 Plaintiffs are entitled to a declaratory judgment that all Defendants are jointly and

severally liable for any further costs incurred in response to the release or threatened release of hazardous substances at the Subject Property which are not inconsistent with the applicable requirements of the National Contingency Plan.

THIRD CLAIM FOR RELIEF

(Injunctive Relief Against All Defendants Pursuant to California Health and Safety Code Section 25358.3(e).)

62. The allegations in paragraphs 1 through 61 are incorporated by reference as if fully alleged herein.

63. Where there has been a release or threatened release of a hazardous substance, California Health and Safety Code section 25358.3(e) permits DTSC to secure such relief from a responsible party or parties as is necessary to abate the release or threatened release. When DTSC has shown that a release or threatened release of a hazardous substance has occurred or is occurring, and that there may be an imminent or substantial endangerment to the public health and safety or to the environment, the court may grant a temporary restraining order or a preliminary or permanent injunction.

64. There has been a release or threatened release of a hazardous substance from the Subject Property that DTSC has determined has caused an imminent or substantial endangerment to the public health or welfare and to the environment and DTSC has determined that action is necessary to abate the danger or threat from the release or threatened release of hazardous substances to the environment.

65. Each Defendant is a responsible party liable pursuant to California Health and Safety Code section 25358.3(e) to take such action as necessary to abate the danger or threat caused by the release or threatened release of hazardous substances at the Subject Property.

PRAYER FOR RELIEF

WHEREFORE; Plaintiffs pray for judgment against each of the Defendants:

1 1. For a judgment that each Defendant is jointly and severally liable to
2 Plaintiffs without regard to fault under section 107(a) of CERCLA, 42 U.S.C. §
3 9607(a), for costs incurred by Plaintiffs in responding to the release or threatened
4 release of hazardous substances at or from the Subject Property, such costs to
5 include without limitation attorneys' fees, all enforcement costs, and the costs of
6 this suit, in an amount to be proven at trial;

7 2. For interest on the above sums as provided by section 107(a) of
8 CERCLA, 42 U.S.C. § 9607(a);

9 3. For a judgment, pursuant to section 113(g)(2) of CERCLA, 42 U.S.C.
10 section 9613(g)(2), that all Defendants are jointly and severally liable to Plaintiffs
11 without regard to fault for all further costs incurred in response to the release of
12 hazardous substances to the Subject Property;

13 4. For an order requiring each Defendant to take action pursuant to California
14 Health and Safety Code section 25358.3(e) to abate the danger or threat from an
15 imminent or substantial endangerment from the release or threatened release of
16 hazardous substances at the Subject Property;

17 5. For such other relief as the Court deems just and proper.

18
19 Dated: May 5, 2010

Respectfully submitted,

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21 Attorney General of California
22 DON ROBINSON
23 Supervising Deputy Attorney General
24 JAMES R. POTTER,
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